No. 3687

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

THE UNITED STATES OF AMERICA,
Appellant,

vs.

R. J. NELSON, M. BURNS, JAS. ALLEN, R. W. KELLY, C. VANDERLEY, G. SWANSON, C. B. PETTERSON, K. H. NIEMI, PETER EMMERS, S. JOHANNSEN, ANDRIES VAN ROON, LENHART SAARNIA, L. R. DRAKE, F. JORGENSEN, A. A. KRUTMEYER, JOHN R. WHALEN, V. J. RISARDO, C. J. SULLIVAN, J. E. GOUGH, A. H. LAKE, P. S. MURRAY, E. J. FARRELL, R. SCHULZ, S. H. HINRICHI, D. L. HEYWOOD, JAMES MOORE and PATRICK O'MARA,
Appellees.

BRIEF OF APPELLANT

UNITED STATES OF AMERICA

UPON APPEAL FROM THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, FIRST DIVISION IN ADMIRALTY.

JOHN T. WILLIAMS,
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STATEMENT OF THE CASE.

In June, 1920, the first, second and third mate, and a portion, namely, twenty-four members of the crew, of the S. S. "Cockaponset" sued the United States in the Southern Division of the United States District Court for the Northern District of California, First Division in Admiralty, on account of salvage services alleged to have been rendered by them to the S. S. "City of Omaha" between May 29, 1920, and June 5, 1920. Both of the vessels were owned by the United States at the time. (Tr. pp. 13-17).

The value of the "City of Omaha" at the time the services were rendered was approximately One Million Nine Hundred and Twenty Thousand Dollars, and the value of her cargo was about Six Hundred and Six Thousand, Four Hundred and Seventy-five Dollars. (Tr. p. 25). The value of the "Cockaponset" and her cargo is not shown by the record. It does not appear that the cargo on the "City of Omaha" was owned by the United States. At the time in question the total amount of the wages of the officers and crew of the "Cockaponset" was Five Thousand Two Hundred and Twenty Dollars per month, her master's pay was Three Hundred and Fifty-seven Dollars and Fifty Cents per month, and that of her supercargo was One Hundred and Fifty-five Dollars per month, making in all a pay-roll of Five Thousand Seven Hundred and Thirty-two Dollars and Fifty Cents per month. (Tr. p. 40).

The District Judge awarded each of the libelants an amount equal to two months' pay, this being equivalent to Eleven Thousand Four Hundred and Sixty-five Dollars, had all the officers and members of the crew of the "Cockaponset" been parties to the litigation. (Tr. p. 64).

The facts are not complicated. While on a voyage from Baltimore, Maryland, to Yokohama and Kobe, Japan, (Tr. p. 45), the "City of Omaha" experienced boiler and engine trouble, and on May 23, 1920, her master wirelessed the agents of the vessel at San Francisco, California, for advice as to what should be done in the event that the boilers failed entirely. (Tr. pp. 94-95). On May 26, 1920, the master again wirelessed the agents that the vessel was making very poor headway, and the situation seemed to be getting worse, and asked for suggestions. The agents in reply wirelessed the "City of Omaha" on May 27, 1920, that the United States Shipping Board had wirelessed the S. S. "Cockaponset" and the S. S. "Diablo" instructing the nearest of those vessels to proceed to Magdalena Bay and tow the "City of Omaha" to San Francisco, and for the "City of Omaha" to call upon the Navy for assistance if necessary. (Tr. pp. 96-98).

This last message was overheard by the "Cockaponset" and her master directed the wireless operator to call up the "City of Omaha' and ask if any assistance was required. This was done, and a reply was received from the "City of Omaha" in

the affirmative. (Tr. p. 41). The vessels were then only about twenty miles apart. (Tr. p. 61).

At noon on May 29, 1920, the "Cockaponset" arrived at the place where the "City of Omaha" was located, and took that vessel in tow, the position of the vessels then being, latitude 21° 14′ north, and longitude 107° 50′ west. (Tr. p. 91.) At this time all of the boilers of the "City of Omaha' were out of commission, and she was steered by her hand gear aft. (Tr. p. 91).

The "City of Omaha" had some boiler trouble between Baltimore and Colon, (Tr. p. 52), and the vessel received some injury in going through the Panama Canal (Tr. p. 49), but that injury had no relation to the boiler trouble that necessitated the towage services now under consideration. (Tr. p. 52).

After leaving the Canal the difficulty with the boilers continued and on May 1, 1920, the "City of Omaha" put into the inner harbor of Salina Cruz, remaining there until May 17, 1920, while her boilers were undergoing repairs. (Tr. pp. 89-90).

On May 17, 1920, the "City of Omaha" left Salina Cruz and proceeded on the way to San Francisco, California. (Tr. p. 90). Between May 17th and the time when the "Cockaponset" took the "City of Omaha" in tow on May 29, 1920, there was further trouble with the boilers of the "City of Omaha" which necessitated the stopping of her en-

gines while boiler repairs were being made at sea. (Tr. pp. 90-91).

The towing operations continued from about noon on May 29, 1920, until 3:15 a. m. on June 5, 1920, when the vessels arrived in San Pedro Roads, California. (Tr. pp. 91-92). The tow line was not cast off, however, until 6:30 a. m. of June 5, 1920. (Tr. p. 42). During the period of towing, the boilers of the "City of Omaha" were not entirely out of commission, but were in such condition as to enable her to be steered by steam on two days, viz., May 31 and June 1. During the remainder of the time the hand steering gear of the "City of Omaha" was used. (Tr. pp. 91-92).

On May 31, 1920, the "Cockaponset" slowed down to enable the "City of Omaha" to change gears from hand to steam, and upon going ahead again the hawser parted at the stern chock of the "Cockaponset", (Tr. p. 91), but this was not on account of any heavy sea or bad weather.

At the time the 'Cockaponset" performed the towage services she was bound for San Francisco, California, from the Panama Canal, (Tr. p. 29), and so was not called upon to go out of her way. The approximate time lost to her was only two and one-half days, and involved only an extra consumption of five hundred and fifty barrels of fuel oil and ten gallons of engine oil, and provisions and wages for the crew covering two and a half days. She lost a log line and rotator because of the poor steering

quality of the "City of Omaha" or, as the master of the "Cockaponset' said, because of her "steering wildly" (Tr. p. 42), but the poor steering of the "City of Omaha" could not, in view of the length of the tow lines and the weather conditions, have endangered either the "Cockaponset' or any of her crew.

The total distance the "Cockaponset" towed the "City of Omaha" was nine hundred and fifty-two miles. At no time, either during the towing operations or while the "City of Omaha" was in a disabled or partly disabled condition was the weather other than fair. (Tr. pp. 42, 46, 49, 56). The towing lines were furnished entirely by the "City of Omaha", and were passed by the crew of that vessel to the "Cockaponset". (Tr. pp. 47-48). The "City of Omaha" was almost directly in the path of vessels en route between United States ports and the Canal Zone. (Tr. p. 49). Although when the boilers of the "City of Omaha" were out of commission she could not be lighted by electricity, yet oil lamps were available. (Tr. p. 57).

Besides being in communication with the S. S. "Diablo" and the "Cockaponset" while she was in trouble, the "City of Omaha" was also spoken to by two other steamers, southbound, who inquired whether she needed assistance. (Tr. p. 61). When the "Cockaponset" picked up the "City of Omaha" on May 29, 1921, the latter vessel was north of Acapulco and north of Manzanillo, and about one

hundred and eighty miles away from Cape San Lucas, according to her master's testimony. According to her position on May 29th, as shown by her log (Tr. p. 91) the "City of Omaha" was 151.65 miles from San Blas, and 243.7 miles from Manzanillo. (Tr. pp. 31, 32). The expert witness called by the proctor for libelants, gave it as his opinion that the "City of Omaha" was not in any danger in that position, under the circumstances as they existed (Tr. p. 33), with her hull sound and with wireless on board. (Tr. pp. 33-35). She was in the open ocean, he said, and was in a position to do considerable drifting, and in the meantime send a boat ashore for assistance, (Tr. pp. 33-35), and, in the event of a heavy storm she could have used her anchors effectively. (Tr. pp. 33-40).

The circumstances appearing in the record (Tr. pp. 40, 58) concerning the wreck of the S. S. "Colima" many years ago, how near she was to the shore, the weather conditions, and the other material facts are too meagre to be of any assistance in this case.

The bad weather between Cape San Lucas and Manzanillo seems generally to occur in the winter season. (Tr. p. 58). During May and the early part of June the weather conditions are generally fair, according to the testimony of libelant's expert (Tr. p. 36), and this testimony is borne out by the extract read in evidence by the proctor for libelants from the book published by the Hydrographic Office

at Washington, the extract being as follows (Tr. p. 30):

> "*San Blas.* Seasons, winds—The southerly winds begin in June and end in November; they are accompanied by much rain, do not blow steadily, and are interrupted by frequent squalls from different points of the horizon, and generally wind up with a dangerous and violent storm. *As this storm, which is always from between southeastward and southwestward, most commonly happens about the time of the festival of St. Francis, the fifth of October,* it has received the local name, 'Cordonazo de San Francisco'; *but it is* sometimes considerably later and then does more damage from coming when the danger is no longer apprehended.
>
> During the dry season the weather is constantly fine. The winds prevail regularly during the day from northwest to west, following the direction of the coast, and are succeeded at night by a light breeze from the land or a calm."

The bad weather seems to come, not in May or June, but much later in the season. And even in bad stormy weather, whatever the danger might be to vessels near shore, there seems to be little to those away out in the open sea, such as was the position of the "City of Omaha" at the time she required towage services. *The "City of Omaha" was then in no danger, and was in need of no assistance beyond that which is ordinarily known and designated as towage.*

A towage service performed under such circumstances as appear in the record in this case, does not warrant an award of the equivalent of over Eleven Thousand Dollars to the officers and crew alone of the "Cockaponset". Neither the 'Cockaponset" nor her crew were ever in the slightest danger, and aside from watching the tow lines on that vessel, it is hard to conceive what duty any member of her crew had to perform during the time the service continued.

SPECIFICATION OF ERRORS RELIED UPON BY THE APPELLANT.

1. The Court erred in awarding to the libelants, or any of them, any amount whatsoever for alleged salvage services to the S. S. "City of Omaha".

2. The Court erred in awarding to the libelants, and to each of them, two months' pay for salvage services alleged to have been rendered by them to the S. S. "City of Omaha" and in awarding to said libelants, and to each of them, any amount in excess of one month's pay to each of them as compensation for said alleged salvage services.

3. The Court erred in failing to render a decision and order judgment entered in favor of the appellant, the United States of America, dismissing the libel of the libelants filed in said cause.

4. The Court erred in awarding to the libelants, and to each of them, any amount whatsoever, for the reason that said libelants were, at the time of

the alleged salvage service, members of the crew of a vessel belonging to the United States of America, and rendered salvage services, if any, to a vessel likewise belonging to the said United States of America, and by reason thereof it became the duty of the said libelants and each of them to render said services, without compensation beyond their wages as seamen on said United States vessel.

BRIEF OF THE ARGUMENT.

There is nothing in the record that warrants the assumption that the services rendered to the "City of Omaha" by the "Cockaponset" constituted anything more than ordinary towage. Assuming, however, for the sake of argument, that those services constituted salvage, it was certainly salvage of a very low order, that did not warrant the excessive award made.

In the case of *The Melderskin,* 249 Fed. 776, the award was as great if not greater than that found in any of the adjudicated cases involving towage, but even though the facts in that case indicated a salvage service beyond question, yet the amount awarded to the master, officers and crew of the salving vessels, the S. S. "Hesperides", was much less than the amount awarded in the present case.

The facts in the "Melderskin" case not only showed large values at risk, but much immediate danger not only to the disabled vessel and to the salving vessel, but to their officers and crews. In

September, 1915, the "Melderskin" while on a voyage from Santos to New York, laden with coffee, broke her tail shaft, and totally lost her propeller. Her subsequent efforts to sail resulted in her not even getting steerage way, although there was plenty of wind. She drifted 210 knots in a period of 9 days, and when 180 knots east of San Salvador fell in with the S. S. "Hesperides", a large vessel with a valuable cargo. The "Hesperides" towed the "Melderskin" a distance of 890 knots in 10 days, and landed her at Tybee Roads. During most of the time this service was being performed heavy seas rendered the towing exceedingly difficult, and while the services were being performed there was great risk of hurricanes arising, September being known as a "hurricane month". Before the "Melderskin" was brought to a place of safety, the tow lines broke three times, owing to stress of weather. There was no radio apparatus on the disabled vessel. Her value at risk, including cargo and freight, was approximately $1,450,000. The expenditures of the "Hesperides" for coal, oil, hawsers, etc., made necessary by the service, amounted to almost $2,000.00. Under these circumstances the Court made an award of $45,000.00 and expenses, one-fifth of this amount to go to the master and crew of the "Hesperides", in proportion to their respective wages, except that the master, the chief, second and third mates, and four engineers were awarded a double share out of the fifth. The salvage service in the "Melderskin" case, in view of the circumstances, was of a very

high order. It was salvage in the true sense of the word, and not mere towage, and yet the award made was much less than in the case at bar.

Another case where a substantial award was made under circumstances clearly indicating a true salvage service is that of *The Varzin,* 180 Fed. 892. In that case it appears that the "Varzin", while on a voyage from Australia to Boston and New York, broke her propeller shaft when about 350 miles from Boston. She was water tight, and otherwise seaworthy. Her sails were not intended for independent navigation, and she could not shape her course with them in bad weather. On February 1st, she was spoken to by the S. S. "Erika", then on a voyage from New York to the Azores and Lisbon. The "Erika" took her in tow, and the vessels reached Boston on February 9th. Before the "Varzin" was taken in tow the "Erika" had to stand by during the whole night, because the swell was so heavy and the weather so bad that nothing could then be done safely. By daybreak the wind had increased to a squall. Much stormy weather was encountered by the vessels while the towage service was being rendered. On the night of February 4th there was a hurricane, and at 8:30 p. m. on that day the hawser parted and the "Varzin" went adrift. While waiting for the storm to abate the vessels drifted from their course. During this heavy water there was considerable danger to the "Erika" owing to the heavy tow, and she was somewhat strained. On February 5th, after the

"Erika" had stood by all night, a hawser was heaved aboard the "Erika" by the "Varzin", and the towing continued. On February 7th snow squalls and bad weather was again encountered. The "Varzin" at the time, with her cargo and freight at risk, was worth $1,500,000.00. The services rendered took the "Erika" 10 days and 13 hours, including 36 hours spent in standing by, and her schedule in Spain was disarranged. The Court under these circumstances of extreme peril made an award to the "Erika" of $45,000.00 and expenses for coal, repairs, etc., and *in allowing this amount the Court admitted that it was fixing a larger award than had theretofore been granted, but excused the largeness of the award by reason of the great value of the property saved and its danger.*

In neither of the cases just referred to was the service rendered to the disabled vessel at all similar to the service rendered to the "City of Omaha" in the present case. A very similar case, however, is found in *Bergher et al. v. General Petroleum Company et al.,* 242 Fed. 967, the award in that case having been made by Judge Dooling of this district. In that case the S. S. "Mills' on August 1, 1915, became disabled, while off the west coast of Mexico, because, owing to the dirt and water in her fuel oil, she was unable to make steam. In this condition she difted with the wind at the rate of about one mile per hour until August 5, 1915, and then was picked up by the S. S. "Francis Hanify" and towed to San Pedro. During the four days that elapsed

immediately before she was taken in tow she had drifted from a position about 60 miles from shore to a position about 10 miles off shore. The towage was under contract at about regular charter rates. The towing took about 3 days and 4 hours. No agreement whatever was made with the crew, and nothing paid them except their regular wages, and they sued in admiralty for their services. Each vessel was worth about $200,000.00. Judge Dooling held in this case that the circumstances indicated that the service was one of salvage, although this conclusion seems to be based upon the fact that the disabled vessel had drifted to within 8 or 10 miles from shore, and he allowed to each member of the crew compensation equivalent to one-half month's pay. The services in the case do not appear to have been more than ordinary, and the main difference between the Bergher case and the one now under consideration seems to be in the matter of values, but as we will show later, the question of value, unless there is considerable risk, is a matter of minor consideration.

One-half month's pay to each member of the crew was also awarded in *The Roanoke,* 209 Fed. 114, and this award was sustained by the Circuit Court of Appeals of this Circuit in 214 Fed. 63. The "Roanoke", worth about $150,000.00, and carrying 93 passengers and cargo, became disabled by the loss of her propeller in the neighborhood of Point Arguello, while bound from San Pedro to San Francisco. After drifting for some time she an-

chored in 14 fathoms of water, one-half to three-quarters of a mile from shore. The S. S. "Santa Clara" came to her assistance in response to a call, and took her in tow. The Circuit Court of Appeals said that it thought the allowance liberal and in excess of what it would have awarded, but allowed it to stand with the comment, that while the service was not of a high order, it was entitled to be classed as salvage service.

The Wellington, 52 Fed. 605, is a sample of an award where the dangers and risks were much greater than in the present case, although the award was much less. The "Wellington", en route from British Columbia to San Francisco with coal, broke her shaft. An attempt was made by a steamer to tow her, which failed because of lack of suitable hawsers. The "Wellington" was afterward sighted by the S. S. "San Pedro", 90 miles south of Cape Flattery, in a helpless condition, and while a southeast gale was blowing. After two hours of skillful work, which resulted in some injuries to the master and crew of the "San Pedro", the "Wellington" was taken in tow and brought to "Royal Roads", about 250 miles distant. The gale continued while this service was being rendered. The "Wellington" had a value of about $100,000.00, not including her cargo. During the time the towing lines were being made secure, the sea was rough, and the situation was one of imminent danger to both vessels. The towage service lasted about 22 hours, and while it was being performed the "Well-

ington'' steered badly. The award in this case was $2,500 to the master of the ''San Pedro'' and $100 to each member of her crew who was a party to the libel.

In this case the Court held that when the value of the salved ship is small the salvors are entitled to a larger percentage than where it is large, and that where the value of the salving vessel, and therefore the risk, is large, the award should be greater and the ratio of the owner's share to that of the master and crew should be larger than where the value of the salving vessel is small.

The rule to be applied in cases where the salvage, as in the case at bar, amounts to little more than ordinary towage, was laid down by Judge Morrow in the case of *The Monticello,* 81 Fed. 211. The boiler of the ''Monticello'' had broken down between Point Arena and Point Reyes, about 100 miles from San Francisco. The vessel was attempting to proceed under a jib sail, and was in no particular danger of going ashore before assistance sent for would arrive, although a W.N.W. wind tended to drive the ''Monticello'' towards shore, and she could do but little more than keep her steerage way. The S. S. ''San Benito'', after several unsuccessful attempts, took the ''Monticello'' in tow, and pulled her to San Francisco. The salving vessel with her cargo was worth about $445,000.00, and the salved vessel about $12,000.00. The ''Monticello'' evidently was in some danger,

as she was but from 5 to 15 miles from shore. The "San Benito" experienced no risk or danger. The Court held under these circumstances that it was not a case of ordinary but of extraordinary towage, which required reasonable compensation, and awarded the sum of $350.00 for the service. It was held that the taking of the "Monticello" in tow by a passing steamer in the ordinary weather of the season, if a salvage service was of a very low order, and that the fact that the "Monticello" was in part disabled, and that the state of the wind and sea was such as would in time probably have caused her to drift ashore, was no ground for increasing the compensation when it was certain that assistance in any event would have reached her before the danger became imminent. It was held in the case that even if the towing scarcely amounted to the dignity of a salving service it would be compensated at a somewhat greater rate than that of towage by tugs intended for the purpose.

The "Monticello" appears to have been in at least as perilous a condition as was the "City of Omaha" when she was taken in tow by the "Cockaponset".

A case in which the weather conditions and the risks involved are somewhat similar to the present case is that of *The Catalina,* 105 Fed. 633. There the "Catalina", a large Spanish steamship valued at $200,000.00, while in the Gulf of Mexico, on her

way in ballast from a Mexican port to New Orleans, broke her propeller shaft beyond temporary repair. She then attempted to proceed by sail, but was becalmed about 60 miles from the mouth of the River, and during the night signaled the S. S. "Olympia" for assistance. The "Olympia" agreed to tow her to the South Pass, the amount of compensation to be determined later. The crew of the "Catalina" delivered a hawser on board the "Olympia" and the towage was performed in safety, the weather being calm and the sea smooth. The "Olympia" was delayed by the service about 24 hours. The Court said that it was unable to perceive that the services rendered to the "Catalina" by the "Olympia" were attended with any extra risk not accompanying ordinary towage, except that they were rendered by a ship not constructed for nor engaged in the towing business, and that while it agreed with the District Court in holding that the services rendered were salvage services, it was clearly of the opinion that they should be held to be salvage services of a low order, *and should be compensated on the basis of towage services,* an equal amount to be added as salvage compensation.

Another case in which the Court held that the award should be made on the basis of the commercial value of the service is that of *The New Camelia,* 105 Fed. 637. The "New Camelia", a steamer worth $35,000, and having on board 150 passengers, broke her shaft when in the middle of Lake Ponchartrain, and became wholly disabled from further

navigation. She was towed to port by a tug, the service requiring but a short time. The value of the service was estimated at from $15.00 to $30.00. Subsequently members of the crew of the tug libeled the steamer for salvage service, and the lower Court fixed the value of such services at 5% of the value of the salved vessel, amounting to $1750.00, and apportioned one-half to the crew of the tug, which was equal to about three months' wages. It was held by the Circuit Court of Appeals that while the services rendered might properly be considered salvage services, they were not of such an order of merit on the part of the crew as to justify the award made to them, and that the vessel not having been in great peril, *the total award should not exceed double the value of such services.* The Court was of the opinion in this case that the service was of the lowest order of salvage, and should be compensated for on the basis of work and labor, and said *that a vessel that is so unfortunate as to break its shaft and lose its propelling power, thus putting its owners to delay and expense, ought not to be mulcted with large compensation to alleged rescuers who have been minor factors in rendering assistance.*

The Robert S. Besnard, 144 Fed. 992, is authority for the proposition that if a vessel is in a position which requires towage service only, the mere fact that she had previously suffered injury does not change the nature of the service to one of salvage, unless there are some circumstances of peril, im-

mediate or to be reasonably apprehended, from which the vessel is relieved, or some hazard encountered or unusual work done by the relieving vessel. This case discusses at length the distinction between towage, under which the crew would not be entitled to additional compensation, and salvage, in which case they would.

The award made in the present case can only be accounted for upon the assumption that the District Judge overlooked the fact that the circumstances were such as to establish that the services rendered by the "Cockaponset" to the "City of Omaha" constituted merely ordinary towage, and had none of the elements that are found in true salvage. The "City of Omaha" was in no immediate danger, neither was the "Cockaponset". The "City of Omaha" was near the beaten path of vessels plying between United States ports and the Canal Zone. She was a long distance from any land, and the weather conditions were good. She did not need to be salved. She was in need of towage service only. The crew of the "Cockaponset", so far as the record shows, did nothing. Even the tow lines were passed between the vessels by the crew of the "City of Omaha".

It is true that the "City of Omaha" had a value of $1,920,000.00, but that, as shown by the cases, was a minor factor. Her cargo was not owned by the United States, and should not be taken into consideration in the present libel suit.

The theory that salvage services should be based on values is now practically abandoned, particularly where those values are enormous and the actual service and risk is small. In the case of *The Kia Ora,* 246 Fed. 143, counsel for the respondent insisted that in fixing a salvage allowance the Court should not undertake to base it upon a percentage of the value saved, because that method is antiquated and should no longer be followed, and the Court said it was inclined to concur in the view that such was not the proper and certainly not the practical rule of arriving at a fair and just compensation where the values salved are large.

The theory of awarding to salvers a percentage of the value salved grew up at a time when vessels were comparatively small and were not propelled by steam, and when there was not available to the maritime world the benefits of the wireless system of communication.

In *The Gambetta,* 74 Fed. 259, the principle was laid down that the exact value of property saved, when large, is a minor element in computing salvage, and as the value increases the rate percent given is rapidly reduced, and that it is compensation for actual service rendered, and a reasonable gratuity for the benefit of commerce that is contemplated, and not a fixed percentage of the property saved.

So far as the share that should be awarded to the crew is concerned, in the recent case of *Rivers* v.

Lockwood, 239 Fed. 380, the Court held that crews of tugs were entitled to receive ten per cent of the full award when the service consisted chiefly of towage based upon a salvage basis.

In ancient times, when the personal heroism of members of the crew of a vessel entered largely into the salvage services rendered, it was customary to set aside to them a large proportion of the total award. At the present time, when the owner of the salving vessel has frequently at risk property worth millions of dollars, and the actual services rendered by the members of the crew amount to little more than services they are called to perform as part of their ordinary daily duties, the policy of the law has been to award to the owner of the salving vessel a larger proportion of a total award than he would have received under the old conditions.

It is respectfully submitted in this case that the evidence shows nothing more than ordinary towage, for which the libelants would not, under the law, be entitled to recover any additional compensation. Should, however, the Court feel that the service, although constituting little more than ordinary towage, has in it some of the elements of salvage, the respondents contend that the compensation to be awarded to the libelants for the service should not be based upon the large values shown to exist, but should be based upon actual service rendered by the libelants for which they have not already

been compensated, together with such a reasonable additional amount as would be fair and proper within the limits of the cases relied on in this brief, having in mind the fact that no additional unreasonable burden should be placed upon a merchant marine already struggling under handicaps almost too heavy to bear.

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